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Report of the Working Group on the Universal Periodic Review*

Austria

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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1. Austria welcomes the recommendations made during its Universal Periodic Review on 9 November 2015 where it deferred decision on 71 recommendations. These have been examined and Austria would like to provide the following responses.

2. The following recommendations enjoy the support of Austria:

141.7.; 141.8.; 141.10.; 141.11.

Before considering ratification, the jurisprudence of the Committee on the Rights of the Child is being observed closely. A preliminary assessment of the implementation practice of the Committee has been made. These efforts will be continued.

141.13.; 141.14.; 141.15.; 141.16.; 141.17.

The question of maintaining or withdrawing reservations is continually being reviewed with together all competent authorities, as evidenced by the recent withdrawal of the reservations to CRC and CEDAW. The reservations upheld are all in accordance with the object and purpose of the conventions. To a large extent, their purpose is to clarify the relationship to other international human rights instruments.

The withdrawal of the reservations to CAT is being considered.

A withdrawal of the reservations to Art. 10 and 14 ICCPR is not envisaged, as a separate accommodation of juveniles and adults in the penitentiary system cannot be fully guaranteed. The specifications relating to Art. 14 ICCPR are still necessary and are applied in conformity with the constitutional principle of a public hearing in judicial proceedings.

141.26.

All international human rights conventions to which Austria is a party form part of Austrian law and are mostly implemented through legislative measures. The ratification of the Optional Protocol to ICESCR is not considered for the time being.

141.27.

The three members of the Ombudsman Board are nominated by the three largest political parties represented in Parliament and are appointed by Parliament as a whole. This procedure guarantees democratic legitimacy in conformity with the Paris Principles.

141.28.

Concerning the inclusion of minority children, the Austrian education system offers specific mother tongue teaching based on special support measures as requested by minority representatives.

Children with disabilities can fully complete their compulsory education with all benefits provided for by the school legislation. In the past years, more than 50% of all pupils with disabilities have already been taught in integrative school models. These offers are expanded in line with the NAP Disability adopted in 2012.

141.29.

Human rights education is an integral part of "political education" in schools. Since 2015 the subject "history and social studies/political education" is part of the curriculum from the 6th grade onwards. Human rights topics are often the subject of extra-curricular activities. Advanced training programmes use human rights education as an interdisciplinary element.

Human rights education representatives were appointed at Austrian universities, working towards incorporating human rights into curricula and expanding existing curricula. Several university faculties are researching, publishing and teaching in the field of human rights.

141.37.

The current initiative to expand the offer of education and childcare facilities improves the compatibility of family and work and the participation of women in the labour market. A possible legal entitlement to these services is being examined.

Concerning the labour market, policy measures are continuously taken to improve gender equality.

141.47.

Hate speech in political discourse is publicly condemned and prosecuted. Public remarks by politicians are analysed and criminal proceedings initiated, if necessary.

141.49.

Hate crime is a criminal offence and related data are being collected. On 1 January 2016, the amendment of Section 283 Criminal Code on hate crimes came into force, implementing the EU Framework Decision on combating certain forms and expressions of racism and xenophobia, the Council of Europe Additional Protocol to the Convention on Cybercrime as well as ECRI and CERD recommendations.

141.50.

Existing criminal law and established systems ensure an independent investigation. Additionally, a study on possible improvements is being prepared.

141.51.

In the course of the parliamentary procedure, the draft State Protection Act was amended in order to address legal protection concerns.

141.58.

See also 141.46.

The Islam Law 2015 does not restrict the rights to free exercise of religion and choice of language in religious scripts. It stipulates that Islamic religious communities are free in belief and teaching and have the right to manifest their religion in public.

As for any other religious community, a request for official recognition as religious society necessitates the submission of the theological doctrine in the official language, German. The principle of financial self-sustainability applies to every religious community, i.e. its ordinary activities must be financed from national sources. Financial contributions from abroad are not prohibited as long as they are not of a recurrent character. Individual donations are still possible.

In addition the law provides for various rights concerning the free exercise of religion for Muslims.

141.59.

Accepted with the understanding that this recommendation relates to persons with disabilities.

141.60.

The current reform of the Austrian guardianship law aims at restricting substituted decision-making to exceptional cases in which the decision making of the person concerned cannot be reinstated. Promotion of self-determination and strengthening of alternative support measures are central.

Substituted decision-making will remain necessary where persons could otherwise not participate in legal affairs, e.g. comatose persons or persons unable of judgement due to health reasons.

141.63.

Numerous measures for the protection of the Slovenian minority in Styria have been taken. The Federal Region of Styria promoted the use of Slovenian in compulsory schools by approving 2013 additional resources for an extra 20 hours teaching in 10 schools.

A continuing exchange exists between Austrian and Slovenian partner schools. At present, 92 children attend optional Slovenian classes, 45 children regular ones. Moreover, Slovenian is being taught as foreign language in secondary schools in Graz and Radkersburg. Also, many children from Slovenia attend kindergarten, compulsory and higher schools in Styria. Additional legal measures for the Styrian school system are not required.

141.65.

Regarding the decreasing number of children in compulsory schools in Carinthia, the Carinthian regional government, on 20 May 2015, adopted a new school-location concept, aimed at merging different schools as well as sports, culture and recreation facilities into "educational centres". The concept guarantees for each local community a primary school if there are at least 10 pupils, in bilingual communities 7 pupils.

On the basis of the Carinthian Minorities School Act those educational centres allow for a continuous education in German and Slovenian, provided that teachers with appropriate knowledge of these languages are available. In order to improve the quality of bilingual teaching, other elements are incorporated into day-care such as cooperation with the Slovenian music school and bilingual cultural and sports associations as well as with bilingual free-time pedagogues.

141.68.

Austria adheres to its obligations under international instruments; the national migration and asylum legislation is based on international human rights standards. New developments stemming from national jurisdiction as well as from recommendations and judgments of international monitoring bodies and courts are continually reviewed, addressed and integrated into Austrian legislation and the law enforcement system. In the framework of basic care for asylum seekers, all relevant international, European and national provisions are being implemented.

141.69.

Austria continually takes measures, within its budgetary resources, to improve the integration of migrants, refugees and asylum seekers. Due to the different legal status of refugees and migrants/asylum seekers, it is not possible to guarantee both groups access to labour market and social benefits to the same extent.

No such difference exists regarding access to education. All children of compulsory schooling age have the same access to education. Like Austrian minors, after

compulsory schooling all children have the possibility of attending secondary schools.

All asylum seekers and refugees are covered by the Austrian public health insurance and thus are guaranteed a health protection level equal to Austrian citizens. Furthermore, socio-educational and psychological support is available for asylum seekers.

141.70.

Austria acknowledges the efforts to systematically comply with the internationally recognised principles and guidelines in the field of corporal social responsibility, as stipulated, inter alia, in the UN Guiding Principles on Business and Human Rights.

The task of the Austrian National Contact Point, established according to the OECD Guidelines for Multinational Enterprises, is to raise awareness for the Guidelines and to provide a dialogue and mediation platform for complaints on alleged breaches of the guidelines. In consistence with the UN Guiding Principles on Business and Human Rights, the chapter "Human Rights" of the OECD Guidelines aims at supporting multinational enterprises in avoiding any negative human rights impact through their business activities.

The recommendation is accepted with the understanding that the results of the ongoing internal EU discussion on a common approach on the topic should be awaited. Austria reserves its right to implement the recommendation according to its national obligations and international framework.

141.71.

The current revision of the decree of the Federal Ministry of the Interior on allegations of ill-treatment by law-enforcement officials will particularly focus on an improved statistical data collection system.

In judicial matters, a data collection system on offences and sentences concerning such allegations already exists, providing a suitable basis for corresponding statistics. In order to increase the effectiveness and data comparability of this system, the initiative "Justiz 3.0" has been launched, aiming at an optimised IT support through a fully digital file. Improved cooperation with the police authorities and their data collection system is envisaged to guarantee an optimised data information flow and a better evaluation of data between police and justice institutions.

3. The following recommendations did not enjoy the support of Austria:

141.1.; 141.2.; 141.3.; 141.4.; 141.5.; 141.6.; 141.9.

OP to ICESCR:

Respect for economic, social and cultural rights is of great importance to Austria. By ratifying ICESCR, the (revised) European Social Charta and other international human rights conventions, Austria has committed itself to a comprehensive human rights protection system in the field of ESC rights. There are numerous possibilities for individuals to file complaints or appeals on a national and European level. The ratification of the Optional Protocol to ICESCR is still being examined, taking particularly the jurisprudence of the ICESR Committee into account. However, ratification is not envisaged for the time being.

With regard to recommendations 141.1, 141.6, 141.9 to ratify OP to CRC-IC see recommendations 141.7. et al.

141.12.

The content of the Convention is already fully implemented in the Austrian legislation; a ratification of this convention from 1960 is not envisaged anymore.

141.31.

The different retirement age for men and women is constitutionally guaranteed until 2033.

141.38.; 141.39.; 141.40.; 141.41.; 141.42.; 141.43.; 141.44.

Austria places high emphasis on combatting racism and discrimination and is taking comprehensive measures on various levels. However, the preparation of a NAP Racism is not envisaged. Anti-racism measures are already included in the existing NAP Integration. Moreover, in implementing a recommendation from the 1st UPR cycle, the government is working on a NAP Human Rights, which will also comprise of measures against discrimination and racism.

141.46.

Religious and ethnic minorities are not discriminated by law in Austria, on the contrary, they benefit from constitutional protection against discrimination. Therefore, there is no need to "end discrimination in law".

Regarding religion, Austria is pursuing a path of tolerance. Freedom of religion is constitutionally guaranteed for everyone. The Islam Law 2015 provides for various rights for the free exercise of religion for Muslims.

141.48.

The procedures for the investigation of potential cases of ill-treatment by the police are regulated by criminal law and by decrees of the Federal Ministers of Justice and of the Interior. All allegations of ill-treatment must be immediately reported to the public prosecutor, within 24 hours at the latest. The criminal investigation department and the Public Prosecution Office are obliged to investigate ex-officio every allegation of ill-treatment in an impartial manner.

In order to identify possible weaknesses in the system, the Federal Minister of Justice has ordered an examination of this procedure, in the context of which a study will be commissioned to look into such cases in more detail.

Regarding the possible introduction of an independent investigation authority it has to be underlined that the constitutional discretionary power to institute criminal proceedings regarding allegations of ill-treatment lies with the independent public prosecutor. The combination of different tasks that such new authority would need to fulfil, as the investigation of allegations, mandating disciplinary proceedings and the referral of cases to the judicial authorities, seems to be contrary to the strict constitutional requirements of separation of powers and is thus not envisaged.

141.52.

Austria guarantees the legal, economic and social protection of the family in compliance with the relevant provisions of international human rights instruments to which it is bound. The wording of Art.16(3) Universal Declaration of Human Rights does not adequately reflect the developments since 1948 anymore. In particular, the Revised European Social Charter (Art. 16) and the EU Charter of Fundamental Rights (Art. 33(2)) contain provisions on the protection of family life. However, the family as such does not prevail over the rights of individual family members. In this regard Austria particularly takes into consideration different forms of family life

existing today. The recognition of various living forms as well as the protection of human rights of all members of society from violence and discrimination are important preconditions for using the potential resulting from diversity.

141.61.

Austrian criminal law provides that persons in a poor state of health are not to be imprisoned for the time of such condition.

An exception to this rule exists if the person represents a particular threat to public security, was sentenced to a prison sentence of more than three years and is likely to abscond from his or her sentence. In such cases, the appropriate and secure treatment in a prison or hospital must be guaranteed.

Balancing between the need of medical treatment of persons sentenced to prison and the requirement of protection of the public is a distinctive feature of the Austrian criminal justice system. A complete disregard of this principle, as suggested by this recommendation, is not feasible.

141.62.

Notwithstanding tight budgetary restrictions over the last years, financial support for national minorities was upheld in its current extent. The procurement procedures are transparent and implemented in consultation with the ethnic groups' advisory councils. A yearly report is transmitted to Parliament.

Only in the educational sector, the various ethnic groups received about 400,000 € from the government in 2015. Measures included the introduction of an Austrian-wide communication platform for the minority school system, the development of practice-oriented material for classes in minority languages and the development of a "Curriculum Multilingualism". The City of Vienna adopted numerous measures such as the Vienna Languages App, native reading sponsors, financing for migrants support centres or job orientation offices.

Due to budgetary restraints, an expansion of these measures is not possible.

141.64.

Since 1977 so-called ethnic group advisory councils, comprising of members of all Austrian ethnic groups, exist and give advice to the federal government and the federal ministries on national minority issues. Persons belonging to ethnic groups, as every other Austrian citizen, have the active and passive right to vote and the right to political participation.

No further measures are envisaged.

141.66.

Numerous mechanisms of legal protection for migrants and asylum seekers have been established in the Austrian legal order. Within the basic care system for asylum-seekers additional protection measures are not necessary, as legal counselling and the justice system provide adequate access to justice. Concerning recognised refugees and persons with subsidiary protection status, the status ir. itself provides sufficient protection as they, with the exception of the right to vote, enjoy the same protection as Austrian nationals.

141.67.

see 141.69.

4. These recommendations are noted by Austria:

141.18.; 141.19.; 141.20.; 141.21.;141.22.; 141.23.; 141.24.;141.25; 141.30.; 141.32.; 141.33.;141.34.; 141.35.; 141.36.; 141.45.

In accordance with the current government programme, a comprehensive evaluation of the Austrian equal treatment legislation, including the tools for enforcing the legislation, is being conducted. Harmonising the protection level for acts of discrimination not yet covered by legislation requires further specification. Further discussions regarding provisions exceeding EU directives are required. Austria supports a common approach within the EU.

141.53.; 141.54.; 141.55.; 141.56.; 141.57.

Austria is committed to the current European standards, in particular to those stemming from the case-law of the European Court for Human Rights.